

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of**

**CCADVERTISING  
Petition for Expedited  
Declaratory Ruling**

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**CG Docket No. 02-278  
DA 04-3187**

**REPLY COMMENTS  
OF  
ROY COOPER  
ATTORNEY GENERAL  
OF THE  
STATE OF NORTH CAROLINA**

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Submitted by

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November 17, 2004

**REPLY COMMENTS OF ROY COOPER  
ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA**

On behalf of the State of North Carolina, Attorney General Roy Cooper hereby files reply comments in response to the petition submitted by FreeEats.com, Inc., dba ccAdvertising (“ccAdvertising”) to the Federal Communications Commission (“FCC” or “Commission”) seeking preemption of North Dakota Century Code section 51-28-02 as it applies to automatic dialing, prerecorded message (“AD-PRM”) technology. While North Carolina was not the target of the AD-PRM calls in question, nor does ccAdvertising present a direct attack on interstate enforcement of North Carolina’s AD-PRM restrictions,<sup>1</sup> the State of North Carolina nevertheless supports the responsive comments filed by the State of North Dakota on November 8, 2004.

The Attorney General agrees both that the states have a compelling interest in protecting consumers and promoting privacy and that Congress did not intend for the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, to preempt states’ efforts to protect their residents’ privacy in their homes. The Attorney General urges the

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<sup>1</sup> See North Carolina Telephone Solicitation Act of 2003, N.C.G.S. § 75-104 (2204). The evidence presented by ccAdvertising suggests the company’s activities would fall within an exemption under North Carolina’s law. See N.C.G.S. § 75-104(b) (permitting prerecorded messages for purposes of opinion polling).

Commission to recognize states' authority to enact and enforce broader restrictions on AD-PRM calls in their respective states, and thereby deny ccAdvertsing's petition to preempt North Dakota's law. Such restrictions are consistent with the TCPA and the federal interests expressed therein. Moreover, such restrictions exemplify the states' ability to recognize and act quickly upon the needs of their respective residents. The legislative history of the TCPA reflects Congress' intent to forge a partnership between the Commission and the states in protecting residential telephone privacy interests.

This matter presents the Commission with an opportunity to affirm its commitment to federal-state cooperation and, in such spirit, the state of North Carolina encourages the Commission to resolve this matter in favor of the state of North Dakota.